

The Animal Care Program and the U.S. Department of Agriculture's Authority Under the Animal Welfare Act: Basic Questions and Answers

Q. What is the Animal Welfare Act (AWA)?

A. The AWA is a Federal law that Congress passed in 1966 and amended in 1970, 1976, 1985, 1990, and 2002 to protect warmblooded animals used in research, bred for commercial sale, exhibited to the public, or commercially transported. The law requires minimum standards of animal care to be established and enforced.

Q. Who enforces the AWA?

A. The Secretary of Agriculture is charged with enforcing and administering the AWA. This includes developing and enforcing regulations, issuing licenses, conducting inspections and investigations, and overseeing administrative law cases, including assessing fines and suspending or revoking licenses.

The Secretary has delegated the authority to develop and enforce regulations, license and register facilities, and conduct inspections and investigations to the Animal and Plant Health Inspection Service (APHIS). The Animal Care (AC) program manages AWA activities and receives support from other APHIS program areas to conduct investigations and develop regulations.

Q. Where do the AWA regulations come from? How does the U.S. Department of Agriculture (USDA) interpret the AWA?

A. The AWA gives USDA authority to set and enforce standards and ensure the care and humane treatment of covered animals. The regulations establish the specifics of how USDA enforces the law by defining terms, setting licensing and registration requirements, and setting standards of care.

When a regulation is created or changed, USDA will notify the public that it is considering new or changed rules, request public comments, and publish proposed and final rules. These notices are published in the *Federal Register*. Links to the regulations can be found on the AC publications Web page at

<<http://www.aphis.usda.gov/ac/publications.html>>.

Recently published rules and notices can be found on the APHIS Web page at

<www.aphis.usda.gov/ppd/rad/webrepor.html>.

AC also develops policies to provide additional guidance in understanding the regulations. These policies are available on the AC Web site at <www.aphis.usda.gov/ac/polmanpdf.html>.

Q. Why does USDA settle AWA cases out of court?

A. Offering facilities the option of settling out of court instead of being officially charged with AWA violations allows APHIS to resolve more cases in less time and provides for greater flexibility in punitive actions. In out-of-court settlements, part of the agreement may include monetary fines being directed toward facility improvements, employee training, or donation to a nonprofit organization benefiting the welfare of animals.

When an Administrative Law Judge imposes a fine for AWA violations, all the money goes into the U.S. Treasury, not animal welfare programs. Many settlements state that the facility neither admits nor denies violating the Act.

Q. Why doesn't USDA confiscate more animals?

A. The Secretary of Agriculture has the authority to confiscate from a regulated facility animals that are suffering. Once APHIS has evidence of such a situation, a notice of intent to confiscate is given to the facility. If they fail to remedy the situation in a short time, authorization is obtained from the APHIS Administrator to confiscate the animals in question. It is not uncommon for APHIS to negotiate with a facility to surrender the animals directly to the outside organization to simplify the process.

Under its authority to confiscate suffering animals, APHIS interprets "suffering" to mean the animal was in any condition causing pain or distress that is not alleviated. For more information on confiscation of animals, see Animal Care Policy 8 on the Web at

<<http://www.aphis.usda.gov/ac/policy/policy8.pdf>>.

Q. What's the difference between licensed and registered? Why doesn't USDA close down more facilities?

A. Dealers or exhibitors using animals covered under the AWA must be licensed to sell or display animals. To obtain a license, a facility must first be inspected and be in full compliance with the AWA standards and regulations. APHIS charges a modest fee for the license, which must be renewed every year. A licensed facility may have its privileges suspended, revoked, or be disqualified from obtaining a license. These licensing actions would effectively "shut down" a facility, but only for regulated animals and activities.

Research and transportation facilities are registered with USDA. They are not subject to inspection prior to registration, but will undergo periodic inspections while registered. There is no fee associated with registration and it must be renewed every 3 years. Registered facilities may receive fines and cease-and-desist orders, but USDA cannot suspend, revoke, or prohibit their registration.

For more information on whether a facility should be licensed or registered, please see Program Aid 1117, "Licensing and Registration Under the Animal Welfare Act" on the Web at <<http://www.aphis.usda.gov/oa/pubs/l&rawa.pdf>> or <<http://www.aphis.usda.gov/ac/awlicreg.html>>.

Q. Why doesn't USDA conduct inspections more often?

A. The AWA requires that USDA inspect research facilities at least once per year. For other facilities, AC uses a risk-based inspection system. Each facility is rated as low, moderate, or high risk. Moderate-risk facilities would be inspected about once per year; low-risk less often; high-risk more often. No matter what the facility's rating, inspectors have the option of inspecting as often as they feel necessary and resources allow. This system allows inspectors to focus their attention on facilities that need assistance coming into compliance with the AWA or need to be monitored more often, so that they can conduct inspections that are more in-depth instead of just more frequent. Inspectors will also follow up on legitimate complaints from private citizens.

Q. What animals are covered under USDA's AWA authority?

A. The AWA covers all warmblooded animals used in regulated activities. Reptiles, fish, amphibians, insects, and other invertebrates are coldblooded animals and not covered under the AWA. The Act does not provide authority to regulate animals used for food and fiber or for agricultural research; therefore, only farm animals used for biomedical research are covered.

The AWA's definition of animal means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, experimentation, or exhibition purposes, or as a pet. This term excludes birds, rats of the genus *Rattus* and mice genus *Mus* bred for use in research; horses not used for research purposes; and other farm animals, such as but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.

Animals sold in retail facilities are also exempt from the regulations, except wild or exotic animals. For more information on what types of facilities are exempt from coverage, please see Program Aid 1117, "Licensing and Registration Under the Animal Welfare Act" <<http://www.aphis.usda.gov/oa/pubs/l&rawa.pdf>> or <http://www.aphis.usda.gov/ac/awlicreg.html>).

Q. What is administrative court?

A. Administrative law is neither criminal nor civil. The USDA maintains its own court system to hear complaints regarding violations of the administrative laws it enforces. Hearings are presided over by Administrative Law Judges for the Secretary of Agriculture.

Q. Can an AWA violation ever be a criminal offense?

A. Violations of certain sections of the AWA are only pursued as criminal, such as those related to animal fighting. Others may include fraudulent records pertaining to the acquisition and disposition of animals. In these cases, the USDA Office of the Inspector General usually conducts investigations and the U.S. Department of Justice prosecutes them. These cases are not overseen by Administrative Law Judges. Outcomes in criminal cases may include a prison sentence and/or fines.

Q. Does having a USDA AWA license exempt a person from State or local animal care laws?

A. No. Federal laws are administered under a different system. Some State or local laws may require that a person have a USDA license to own certain animals, but USDA will only grant the license if the person is conducting regulated activities. If a State also requires a license or permit, that does not affect the need for a USDA license or registration.

A person mistreating an animal could be prosecuted both under the AWA for mishandling if he or she is conducting covered activities and under local cruelty or mistreatment laws.

If a person or facility owns certain endangered or threatened species or imports or exports animals, a permit from the U.S. Fish and Wildlife Service (FWS) may also be required. Contact FWS or State or local government for questions about their authority and requirements.

For More Information

More information on the AC program and the AWA and all publications are available on the Internet at <http://www.aphis.usda.ac>. You may also get information and copies of publications from one of the following AC offices:

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